



P/77-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Eric Polesuk

Serial No.: 10/072,528

Filing Date: February 8, 2002

For: READY TO USE
HAIRCOLORING FOIL

Examiner: S. Willatt

Dated: November 4, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

DECLARATION

1. I, Eric Polesuk, President and CEO of Product Club Corp, and inventor of the pending patent application Serial No. 10/072,528, do hereby declare the following:
2. Prior to the introduction of Product Club's Ready To Use Haircoloring Foil (described in the above-identified patent application) in the fall of 2001, interfolded "pop-up" foil sheets with a width specific for use in the Beauty Industry (approximately 3.5 to 6 inches) did not exist. As a result, for decades, those in the Beauty Industry requiring foil for use in haircoloring applications were left to purchase their foil needs via the foodservice industry. Although readily available and economically priced, foodservice interfolded "pop-up" foil sheets were designed to wrap/cover foodservice products. These foodservice "pop-ups" were readily available in 4 commercial sizes: 7 inch, 8 inch, 9 inch and 12 inch widths depending upon the manufacturer and application. They were all 10.75 inches in length as this was governed by the equipment design. 3.5 to 6 inch wide interfolded "pop-up" foil sheets were not readily available in the

foodservice industry, as this size was too small to effectively cover/wrap food products.

3. The Beauty Industry was forced to adapt to these larger foodservice foil sizes and did so by tearing the foodservice interfolded "pop-up" foil sheets in half in order to end up with a sheet size that was small enough to work in haircoloring applications. Once torn in half along the interfolded edge, the four commercial sizes of foodservice interfolded "pop-up" foil sheets discussed above yielded a new size of either 5 3/8" x 7", 5 3/8" x 8", 5 3/8" x 9" or 5 3/8" x 12". A 5 3/8" width was a workable and manageable width for use in the haircoloring process as small sections of hair are wrapped with haircoloring products to achieve a desired "look". The length of the foil was less important than the width. Haircolorists would choose the required length of foil depending upon the length of hair they were working with.

4. The single biggest problem in working with foodservice interfolded "pop-up" foil sheets in the Beauty Industry is that they are often prepared/converted to the proper Beauty size in advance "behind the scenes", via a six-step process. The first step is to pull out the first sheet of foil from the foodservice dispenser box. The second step is to tear the foil in half. The second step is usually done by placing the foil along the edge of a counter and tearing it in half along its interfolded edge. The third step involves stacking the 2 pieces of torn foil, one on top of the other in a neat and organized pile. Steps one, two, and three would be done repeatedly until enough foil sheets were available for the upcoming haircoloring application. Anywhere from 50-100 foil sheets can be used in the haircoloring process of one client/customer. The fourth step involves bringing the neat pile of foils out to the workstation such that they are ready to be used. The fifth step involves picking up one single piece of foil from the neat pile and placing it into the hair. The sixth step involves picking up the tint brush

that is used to apply color to the hair that ultimately is to be wrapped with the foil. With the process claimed by the present invention, steps 2-5 are eliminated.

5. This six-step process is extremely tedious and time consuming. In many cases it requires an assistant to prepare the foils in advance of the client coming to the salon. Many hours each week are spent preparing the foils such that they could be "ready to use". This process would normally be done in the rear of a salon or behind closed doors such that the client would not see that foodservice type foil was being used in a Beauty application.

6. Even if the foodservice foils were not prepared in advance, a five-step process would be required. The first step is to pull out the first sheet of foil from the foodservice dispenser box. The second step is to tear the foil in half. The second step is usually done by placing the foil along the edge of a counter and tearing it in half along its interfolded edge. To perform the second step the user would have to have his/her hands completely free of any other coloring tools; e.g. tint brush used to apply color products. The third step would involve taking one of the torn pieces of foil and placing it in the hair. The fourth step would be to pick up the tint brush with the user's other hand so that haircolor can be applied to the foil packet. The fifth step involves placing the brush down such that the user can get ready to repeat Steps 1-4 for each piece of foil placed in the hair. Preparing the foils in this "on the fly" method in front of the client/customer, is not practical as it would substantially increase the time necessary to color a client's/customer's hair. Using the process claimed in the present invention, the second step and fourth steps would be eliminated, as the user would not have to place any coloring tools down to complete the process.

7. Product Club's Ready To Use Haircoloring Foil eliminates the need for a five or six step process. Since the interfolded "pop-up" foil sheets are 3.5 to 6 inches in width upon dispensing from the box, they can be used immediately

without further preparation. This process eliminates the many hours each week required to prepare the foodservice type foil into useable sizes required by the Beauty Industry.

8. In addition, each box of Product Club's Ready To Use Haircoloring Foil can be left at the workstation for rapid fingertip use. Since many haircoloring applications requiring upwards of 100 sheets of foil per head, rapid fingertip use is most desirable. In one motion, one skilled in the art of haircoloring, can go right from the box of foil directly to the hair and then apply haircolor with a tint brush. One skilled in the art can then pull the next sheet of foil out of the box with one hand while keeping the tint brush in the other hand. In this case, the tint brush does not ever have to be placed down, which would create an additional step. Further the box of Ready To Use Haircoloring Foil provides a neat and organized way to store the foils at the workstation. Foodservice foils once torn in half and stacked on top of each other can get very messy and damaged as there is no means to contain this product once it is out of the box.

9. The chart below shows sales of Product Club's Ready To Use Haircoloring Foil as claimed in the present application, since its introduction. The product and process were so widely successful that unit sales reached almost 70,000 units in the first year.

| Year | Box of 500 sheets |
|--------------|--------------------------|
| 2002 | 69,238 boxes |
| 2003 | 117,394 boxes |
| 2004 | 118,299 boxes |
| *2005 | 163,268 boxes |

*Annualized sales based on sales through 10/25/05

10. Product Club's Ready To Use Haircoloring Foil product and method were soon copied by at least two other companies. In April 2002, Spillo Corporation, based in California introduced a 5" interfolded "pop-up" foil sheet as did Betty

Dain Creations of Hialeah, Florida in May of 2003. Not only was the product and method copied, but so too was much of the sell copy on the packaging. Product Club on its packaging and in all its print advertising called its product "Ready To Use Haircoloring Foil" due to its ready to use format--a foil that requires no advanced or further preparation. The words "Ready To Use" were soon found and still exist on the packaging of at least one of Product Club's competitors. At least one of these competitors also uses the term haircoloring foil that was established by Product Club. Prior to this, all other companies referred to their product in the generic sense as "highlighting foil" or just "Professional Foil".

11. Product Club's Ready To Use Haircoloring Foil is in many cases twice the cost of a traditional foodservice interfolded "pop-up" foil. Despite this cost differential, Product Club's Ready To Use Haircoloring Foil and process for dispensing the foil were successful at its introduction and still continues to grow its market share. This clearly demonstrates the major advantages that the claimed product and process has over dispensing of foodservice foils in the Beauty Industry. See price grid below.

| Type | Count | Size | Average Retail Cost |
|--------------|--|-------------|----------------------------|
| Product Club | 500/box | 5"x10.75" | \$9 |
| Foodservice | 500/box Once torn in half Yields 1000 sheets | 9"x10.75" | \$9 |

Same Retail cost, but foodservice sheets yield 1000 sheets versus 500 from Product Club. Therefore Product Club price is twice the cost of Foodservice.

12. In summary, as it relates to "pop-up" interfolded foil sheets, the Beauty Industry for decades used foil designed for the foodservice industry. It was

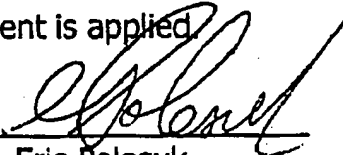
readily available from a number of distribution channels, inexpensive, and actually worked in the haircoloring application once it was cut to the proper size. It was not ready to use upon dispensing from the box and required many additional steps to prepare it for use in the application of haircolor for those in the Beauty Industry. Moreso, foodservice interfolded "pop-up" foil was used, as there was no other "pop-up" alternative for those in the Beauty Industry.

13. The extra steps involved in preparing the foodservice foil for use in haircoloring applications was extremely time consuming, required extra labor, and generated a fair amount of waste when the foils were not cut properly. It was not until Product Club's Ready To Use Haircoloring Foil was introduced that those in the Beauty Industry had a viable alternative to the foodservice sized "pop-up" foil. This product and process was designed specifically for use in haircoloring. Since it was the ideal size and ready to use upon dispensing from the box, those in the Beauty Industry could dispense it from the box and go directly to the hair without any further preparation of the foil. This eliminated the many steps involved with preparing foodservice sized foil. This is the reason for the commercial success of Product Club's Ready To Use Haircoloring Foil.

14. The product and process were introduced and commercially successful from the initial launch. Sales units have steadily climbed over the last 4 years as evidenced in the sales chart above. The product and process have enjoyed great success despite the fact that 1) its selling price is about double that of a foodservice interfolded "pop-up" foil, and 2) that at least two competitors have copied the product and process. The benefits derived from the process are substantial. One such benefit is the time to prepare foils is eliminated, resulting in a quicker application of haircolor for the client/customer. This time saved allows those in the Beauty Industry to potentially see more clients/customers per day or week, resulting in more income.

15. All of the statements made herein are of my own knowledge and are true, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issuing thereon, or any patent to which this verified statement is applied.

November 4, 2005
Date of Signature

By: 
Eric Polesuk